

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.09.2019
PRONOUNCED ON : 01.11.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN
A.S.Nos.884 & 979 of 2009

A.S.No.884 of 2009

T. Annammal ...Appellant/1st Respondent

Vs.

1. K.R.Menan (deceased)
2. Vanaja Menan ...1 & 2 Respondents/Plaintiffs
3. State Bank of India
Branch at Ganapathy,
No.285, Sakthi Road,
Coimbatore. ...3rd Respondent/2nd Defendant
- 4.Premalatha
5. Hemalatha ...4 & 5 Respondents/LRs of the R1
RR4 and 5 brought on record as LRs of the
deceased R1 vide order of court dated 22.07.2019
made in CMP No.7215 of 2018 in A.S.No.884/2009.

For Appellant : Mrs. Hema Sampath, Senior Counsel
for M/s. S. Saravanan

For Respondent : Mr. Krishna Prasad
for M/s. Saryabhauman Associates for
R2, R4 and R5.
Mr. R.R. Pradheep
for M/s. S.Sethuraman for R3

A.S.No.979 of 2009

1. K.R.Menan (deceased)
2. Vanaja Menan
3. Premalatha
4. Hemalatha ...Appellants/Plaintiffs

Appellants 3 and 4 brought on record as LRs of
the deceased first appellant vide order of

court dated 14.08.2019 made in CMP No.17634 of 2019 in A.S.No.979/2009.

.Vs.

1. T. Annammal

2. State Bank of India
Branch at Ganapathy,
No.285, Sakthi Road,
Coimbatore.

..Respondents/Defendants

Prayer: First Appeals filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree of the Additional District cum Sessions Court (Fast Track Court No.I) at Coimbatore dated 16.04.2009 in O.S.No.57 of 2007.

For Appellants : Mr. Krishna Prasad
for M/s. Sarvabhauman Associates for
appellants 2 to 4.

For Respondents: Mrs. Hema Sampath, Senior Counsel
for M/s. S. Saravanan for R1
Mr. R.R. Pradheep
for M/s. S.S.Sethuraman for R2

COMMON JUDGMENT

A.S.No. 884 of 2009 filed by the first defendant and A.S.No.979 of 2009 filed by the plaintiffs are directed against the judgment and decree dated 16.04.2009 passed in O.S.No.57 of 2007 on the file of the Additional District and Sessions Court (Fast Track Court No.1), Coimbatore.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. Suit for specific performance, declaration and permanent injunction.

4. The case of the plaintiffs, in brief, is that the plaintiffs are the husband and wife and the suit property belongs to the first defendant and the plaintiffs decided to purchase the suit property and after mutual discussions, the sale price was fixed at Rs.15,50,000/- and following the same, the plaintiffs paid an advance amount of Rs.50,000/- by way of cash to the first defendant on 19.01.2006. The first defendant had represented that the original sale deed in respect of the suit property and the other documents were deposited with State Bank of India, Ganapathy Branch, namely, the second defendant, by way of an equitable mortgage for the facilities extended to Sheeba Engineering Industries and also impressed upon the

plaintiffs that the second defendant had issued a letter of offer dated 14.11.2005 and had given an offer for receiving a sum of Rs.4,94,000/- towards OTS settlement of the sum due to them and that the first defendant is under the obligation to pay only the said sum. The first defendant further informed that she would be able to convey an encumbrance free title only upon the mortgage loan being cleared in accordance to the letter of offer given by the second defendant for settlement provided the first defendant give her consent for the settlement before 31.03.2006 so as to conclude the same before 30.06.2006. The first defendant requested to make further payment for meeting the other expenses and accordingly, a further sum of Rs.25,000/- was paid by the plaintiffs by way of cheque and further the plaintiffs also issued a DD for Rs.5,05,000/- so as to enable the first defendant to pay the OTS amount to the second defendant and to release the mortgage and the first defendant also informed that the payment had been made to the second defendant and produced the challan dated 17.03.2006 evidencing the payment of Rs.5,00,000/- and also declared that the second defendant had not revoked the letter of offer till the payment of Rs.5,00,000/- was made by her and since the letter of offer is not with any precondition or any restriction and upon the payment being made in accordance to the letter of offer, the mortgage is deemed to have been discharged. The first defendant had been assuring the plaintiffs that the second defendant is under obligation to accept the said sum and discharge the mortgage over the suit property. On the strength of the representation made by the first defendant, the plaintiffs made further payment to the first defendant to discharge her various sundry debts and in the process paid Rs.10,50,000/- till April 2006 as against the full sale consideration of Rs.15,50,000/-. The sale agreement entered into between the parties was oral, but in view of the fact that the plaintiffs may have to get loan from banks/financial institutions, it was decided to reduce the terms of the agreement into writing, accordingly, an agreement dated 02.05.2006 was entered into between the plaintiffs and the first defendant and under the said agreement, the first defendant had acknowledged the receipt of the entire consideration paid on various dates and also the plaintiffs paid a further sum of Rs.1,00,000/- under the sale agreement and thus Rs.11,50,000/- was paid by the plaintiffs as advance and subsequently on 24.05.2006, the plaintiffs made a payment of Rs.50,000/- and obtained an endorsement to that effect on the reverse side of the sale agreement from the husband of the first defendant. As per the terms of the sale agreement, the plaintiffs are under the obligation to pay the balance sale consideration within 15 days from the date of the original documents being returned by the second defendant and the first defendant had agreed to get the original documents from the second defendant within one month. In toto, the plaintiffs has

paid Rs.12,00,000/- towards the sale price. As per the terms of the sale agreement, the first defendant is bound to get the original documents from the second defendant so as to enable the plaintiffs to perform their part of the contract and obtain the sale deed in their favour. However, the first defendant expressed her inability to get the original documents released from the second defendant and wanted further amount to redeem the same. The plaintiffs had been always ready and willing to perform their part of the contract and the first defendant had represented that the second defendant refused to release the original sale deed and furthermore, in view of escalation of the real estate price in Coimbatore and as the first defendant is also found to be negotiating the sale of the suit property with the third party suppressing the suit sale agreement entered into with the plaintiffs and as the plaintiffs had sold their property at Chennai and keeping the balance sale consideration to complete the sale transaction and accordingly, the plaintiffs noticing the conduct and attitude of the first defendant, attempting to wriggle out of the contract, sent a notice through their counsel on 20.12.2006 expressing their readiness and willingness to complete the sale transaction, however, the first defendant failed to respond to the same and hence according to the plaintiffs, the need of the suit for appropriate reliefs.

5. The first defendant resisted the plaintiffs' suit contending that the plaintiffs' suit is not maintainable either in law or on facts and the plaintiffs have not come to the Court with the clean hands and disputed the case of the plaintiffs that she had agreed to sell the suit property to the plaintiffs for a sale price of Rs.15,50,000/- and also disputed that she had received Rs.50,000/- from them by way of cash on 19.01.2006. It is true that the first defendant had availed loan from the second defendant and as the first defendant was unable to pay the loan in time, the second defendant has filed a suit against her in O.S.No.343/1994 and obtained a decree on 09.03.1999 and the first defendant had been served with the notice under Section 13 of SARFAESI Act and the averment that the first defendant had impressed upon the plaintiffs that the second defendant had issued a letter of offer dated 14.11.2005 and agreed to receive a sum of Rs.4,94,000/- towards OTS settlement for the amount due to them and that the first defendant is under obligation to pay only the said sum is false and the first defendant never informed the plaintiffs that she would be conveying an encumbrance free title in respect of the suit property in favour of the plaintiffs and according to the first defendant, to clear the bank's liability, she had approached one Rajasekar, a financier, living near Sungam and the said Rajasekar took a DD for Rs.5,00,000/- payable to State Bank of India and at that time, he took several signatures of the first defendant in blank stamp and plain papers and the

first defendant never agreed to sell the suit property to the plaintiffs and the first defendant had not received Rs.25,000/- from the plaintiff by way of cheque. It is false to state that the plaintiffs had paid Rs.5,05,000/- on 08.02.2006 by way of cheque to the first defendant. It is further false to state that a total sum of Rs.10,00,000/- was paid by the plaintiffs to the first defendant on various dates and it is equally false to state that the plaintiffs had paid a sum of Rs.50,000/- by way of cash. It is false to state that the plaintiffs and the first defendant entered into the agreement of sale on 02.05.2006 and the said sale agreement is a manipulated and created document. The suit property is worth more than Rs.50,00,000/-. Therefore, the first defendant would not have agreed to alienate the same for Rs.15,50,000/- as put forth by the plaintiffs. It is false to state that the plaintiffs had paid a sum of Rs.1,00,000/- under the sale agreement and in toto, paid a sum of Rs.11,50,000/-. The first defendant never intended to sell the suit property to the plaintiffs and Rajasekar might have manipulated the alleged sale agreement in the name of the plaintiffs. The first defendant never agreed to get back the original documents from the second defendant within one month from the date of the sale agreement. The first defendant had not received any money from the plaintiffs and therefore, she is not under any obligation to execute the sale deed in favour of the plaintiffs. The case of the plaintiffs that they had been always ready and willing to perform their part of the contract is false and made with a view to defraud the first defendant. The mortgage debt is yet to be discharged and therefore, the first defendant has no intention to sell the suit property. It is false to state that the first defendant is negotiating with some third parties to sell the suit property and the plaintiffs are not entitled to claim any of the reliefs prayed for and there is no cause of action for the suit and hence the suit is liable to be dismissed.

6. The second defendant resisted the plaintiffs' suit contending that the suit laid by the plaintiffs is not maintainable either in law or on facts and according to the second defendant, the plaintiffs, in collusion with the first defendant, had laid the suit in order to defeat the recovery of money due from the first defendant to the second defendant as per the preliminary decree passed in O.S.No.343/1994, on the file of the subordinate Court, Coimbatore. The suit property had been mortgaged by the first defendant with the second defendant/bank for the facilities extended to Sheeba Engineering Industries and according to the second defendant, the letter of offer dated 14.11.2005 had been issued on terms without prejudice to the rights of the second defendant/bank to take or continue action under the Act unless a compromise is settled under the present RBI OTS scheme. In the said letter, the bank

had informed that the request for settlement would be processed for acceptance subject to the approval of the Zonal office and one of the requisites for the approval of One Time Settlement under the RBI guidelines is that the case filed against the borrowers shall not have been decreed. However, as the suit laid by the second defendant against the first defendant had already been decreed, the first defendant is not entitled for any One Time Settlement as per the RBI guidelines and the same had been duly intimated to the first defendant vide letter date 24.01.2006 and also when the first defendant approached the bank with the bankers cheque of Rs.5,00,000/- to settle the same under OTS scheme, she was also informed about the abovesaid position by way of a letter dated 16.03.2006. Knowing the same, the first defendant had deposited Rs.5,00,000/- with the second defendant in FDR on 17.03.2006 and requested the second defendant to consider their offer for settlement. The alleged sale agreement is said to have been entered into between the plaintiffs and the first defendant on 02.05.2006 without ascertaining the facts that the OTS offer letter dated 14.11.2005 had been cancelled and therefore, according to the second defendant, the abovesaid sale agreement if really effected, would not bind the claim of the second defendant over the suit property and according to the second defendant only to frustrate the execution proceedings initiated against the first defendant, the sale agreement had been effected. To the notice sent by the plaintiffs, a suitable reply had been sent by the second defendant on 29.12.2006. The application for passing the final decree based on the preliminary decree dated 09.03.1999 had been filed before the Debts Recovery Tribunal at Coimbatore in O.A.No.42 of 2007 and the second defendant had also issued a demand notice under the SARFAESI Act on 10.09.2005 to the first defendant calling upon her to discharge the liability within a particular time limit, failing which, the bank would be interested to take further action under the Act. The first defendant had suppressed the sale agreement with the plaintiffs to the second defendant/bank and the payment alleged to have been made by the plaintiffs to the first defendant towards the sale consideration has been challenged by the second defendant and according to the second defendant, the sale agreement has been created only as a sham transaction in collusion with the plaintiffs and the first defendant and the second defendant is entitled to enforce the decree obtained against the first defendant as per law and therefore, the first defendant is precluded by law from transferring by way of sale or lease the mortgaged property in question without the prior permission of the second defendant and therefore, the alleged sale agreement said to have been entered into is illegal, non-est and unenforceable in law and hit by Section 23 of the Indian Contract Act and hence, according to the second defendant, the suit laid by the plaintiffs is liable to be dismissed.

7. On the basis of the abovesaid pleas set out by the respective parties, the following issues were framed by the trial court for consideration.

- 1) Whether the plaintiffs are entitled to obtain the sale of vacant possession of the suit property by paying the balance sale consideration in terms of the sale agreement dated 02.05.2006?
- 2) Whether the plaintiffs are entitled to seek the relief of declaration qua the mortgage over the suit property in favour of the second defendant as claimed in the plaint?
- 3) Whether the plaintiffs are entitled to obtain the relief of permanent injunction as prayed for?
- 4) To what relief the plaintiffs are entitled to?

8. In support of the plaintiffs' case P.Ws.1 to 3 were examined, Exs.A1 to A5 were marked. On the defendants' side, D.Ws.1 to 3 were examined and Exs.B1 to B9 were marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to grant the relief of specific performance in favour of the plaintiffs subject to the decree obtained by the second defendant against the first defendant dated 09.03.1999 in O.S.No.343 of 1994 on the file of the Subordinate Court, Coimbatore and accordingly also granted the relief of permanent injunction prayed for by the plaintiffs and however, declined the relief of declaration prayed for by the plaintiffs and accordingly disposed of the plaintiffs' suit. Aggrieved over the judgment and decree of the trial court, the first defendant and the plaintiffs have preferred the abovesaid appeals respectively.

10. The following points arise for determination in the first appeals.

1. Whether the oral sale agreement dated 19.01.2006 is true, valid and binding on the defendants?
2. Whether the written sale agreement dated 02.05.2006 is true, valid and binding on the defendants?
3. Whether the plaintiffs are entitled to obtain the relief of specific performance as prayed for in respect of the sale agreement dated 02.05.2006?
4. Whether the plaintiffs are entitled to the

relief of permanent injunction as claimed in the plaint?

5. Whether the plaintiffs are entitled to seek the relief of declaration qua the mortgage over the suit property in favour of the second defendant as prayed for?
6. To what relief the first defendant / appellant in A.S.No.884 of 2009 is entitled to?
7. To what relief the plaintiffs / appellants in A.S.No.979 of 2009 are entitled to?

Point Nos. 1 to 5

11. It is not in dispute that the suit property belongs to the first defendant. From the materials placed on record, it is found that the first defendant had availed facilities to Sheeba Engineering Industries and created an equitable mortgage over the suit property in favour of the second defendant/bank. It is further seen and also not in dispute that the second defendant had levied the suit against the first defendant in O.S.No.343 of 1994 and obtained the preliminary decree on 09.03.1999. It is also found that the second defendant had taken further proceedings to pass the final decree in the abovesaid suit and accordingly preferred necessary application before the Debts Recovery Tribunal, Coimbatore. It is further noted that a notice dated 10.09.2005 has been issued by the second defendant to the first defendant under Section 13(2) of SARFAESI Act calling upon the first defendant to clear the abovesaid liability within a particular time limit. Keeping the abovesaid facts in the background, it has to be seen whether the case projected by the plaintiffs qua the sale agreement dated 02.05.2006 is true, valid and enforceable. According to the plaintiffs, the first defendant had agreed to sell the suit property to them for a sum of Rs.15,50,000/- on 19.01.2006. If really any such agreement had been validly entered into between the parties, as rightly put forth by the defendants, the plaintiffs would have endeavoured to secure the sale agreement in writing from the first defendant with reference to the same on 19.01.2006 itself. On the other hand, the case projected by the plaintiffs would only go to show that they had only projected an oral agreement between them and the first defendant qua the sale of the suit property for Rs.15,50,000/- on 19.01.2006. Further according to the plaintiffs a sum of Rs.50,000/- had been paid by way of cash to the first defendant on 19.01.2006. The plaintiffs had not whispered in the plaint as to whether any document had been issued by the first defendant for the receipt of Rs.50,000/- by way of cash on 19.01.2006. However, the plaintiffs would produce the receipt marked as Ex.A4 dated 19.01.2006 stated to have been issued by the first defendant for acknowledging the receipt of Rs.50,000/-

on 19.01.2006. On a perusal of the abovesaid receipt, it is found that in the first page the plaintiffs had assured that they would pay the balance amount within one month from 19.01.2006 and complete the sale transaction. The receipt dated 19.01.2006 is found to have been attested by two witnesses. Even as per the case of the plaintiffs, it is found that the plaintiffs are put on notice that the original sale deed in respect of the suit property and the other documents pertaining to the suit property had been deposited by the first defendant with the State Bank of India towards the equitable mortgage for the facilities extended to Sheeba Engineering Industries. Therefore, when the plaintiffs would put forth the case that the first defendant had offered to sell the suit property in their favour on 19.01.2006 and when at that point of time, the plaintiffs had been put on notice about the mortgage created by the first defendant with the second defendant in respect of the suit property and the original sale deed and the other documents pertaining to the suit property had been deposited with the second defendant/bank, the position being above, in the normal course, no prudent person would have endeavoured or ventured to enter into a sale agreement without the clearance of the abovesaid mortgage debt. Accordingly, without any further verification of the clear title of the first defendant qua the suit property and her ability to convey the suit property free from encumbrance, the case of the plaintiffs that they had proceeded to enter into the sale agreement with the first defendant on 19.01.2006 itself for the sale price of Rs.15,50,000/-, as such, cannot be believed and accepted. It has to be noted at this point of time that the plea had been taken by the first defendant that she had never agreed to sell the suit property to the plaintiffs and not executed the sale agreement and not received any sum from the plaintiffs as projected in the plaint and according to the first defendant for discharging the bank's loan, she had borrowed Rs.5,00,000/- from one Rajasekar (P.W.2) and at that point of time Rajasekar had obtained the signatures in the blank stamp papers and plain papers and therefore, according to the first defendant, taking advantage of the same, at the instigation of Rajasekar, the plaintiffs had come forward with the suit fraudulently to knock off the valuable property belonging to the first defendant. When the plaintiffs are put on notice about the equitable mortgage created by the first defendant in favour of the second defendant even on 19.01.2006, naturally, if the plaintiffs had been prudent, they would have endeavoured to verify the stage of the mortgage transaction and accordingly further endeavoured to enquire with the officials of the second defendant/bank as to whether the first defendant would be in a position to clear the mortgage debt. Accordingly, it is found that the plaintiffs had also been put on notice about the decree which had been already secured by the second defendant against the first defendant

dated 09.03.1999 in O.S.No.343 of 1994 on the file of the subordinate court, Coimbatore. It is further noted that the second defendant had already issued a notice under Section 13(2) of the SARFAESI Act to the first defendant on 10.09.2005. Therefore, if really the plaintiffs had been genuine in obtaining an encumbrance free title qua the suit property, as the prudent persons, before parting with any amount to the first defendant towards the sale consideration, assuming the oral sale agreement projected by them is true, they would have made necessary enquiry with the second defendant/ bank and accordingly, would have come to know about the abovesaid steps taken by the second defendant for securing the mortgage debt from the first defendant. In such view of the matter, to say that the plaintiffs had proceeded to enter into an oral agreement with the first defendant on the mere assurance given by the first defendant that she had been offered a letter of offer to settle the mortgage debt by paying a sum of Rs.4,94,000/- only, under the OTS Scheme, and that the first defendant had assured that she would be able to convey an encumbrance free title on clearing the abovesaid debt under the OTS Scheme offered by the second defendant, if really, the plaintiffs had been prudent, they would have only endeavoured to verify the authenticity and reliability of the offer letter dated 14.11.2005 with the officials of the second defendant/bank as to whether the said offer had been really given without any condition and whether the second defendant would be discharging the mortgage on the payment of the sum demanded under the letter of offer dated 14.11.2005. On the other hand, the plaintiffs would only put forth the case that merely on the assurance given by the first defendant qua the abovesaid letter of offer, they had proceeded to enter into an oral sale agreement with the first defendant qua the sale of the suit property. The abovesaid case of the plaintiffs seems to be totally unacceptable. It is thus found that the plaintiffs, without making any verification as to the ability of the first defendant to convey an encumbrance free title in respect of the suit property in their favour, are found to have come forward with the case that the oral sale agreement had been entered into on 19.01.2006 for Rs.15,50,000/-. The plaintiffs would subsequently also plead that they had paid various amounts on various dates, in all, amounting to Rs.10,50,000/- till April 2006 towards the sale price. According to the plaintiffs, the abovesaid payments had been paid on the assurance that the first defendant had made the payment of Rs.5,00,000/- to the second defendant/ bank based on the letter of offer dated 14.11.2005 and that the second defendant had not revoked the said letter till the abovesaid payment had been made. As abovenoted, if really the abovesaid case of the plaintiffs has any semblance of truth, the plaintiffs as prudent persons, should have endeavoured to verify with the officials of the second defendant/ bank as regards

whether they had agreed to accept the payment made by the second defendant by way of One Time Settlement. To say that the plaintiffs, without making any verification with the officials of the second defendant/bank and merely on the assurance given by the first defendant, had been effecting various payment in her favour, in all, amounting to Rs.10,50,000/- till April 2006, without obtaining the valid document with reference to the receipt of the same, cannot at all be believed and accepted. At this juncture, it is to be noted that the plaintiffs had not pleaded as to what is the acknowledgment given by the first defendant towards the various payments said to have been made by them amounting to Rs.10,50,000/- till April 2006. It is nowhere pleaded by the plaintiffs in the plaint that the first defendant had issued any receipt for the abovesaid amounts paid by the plaintiffs on various dates received by the first defendant. As abovenoted, even for the payment of Rs.50,000/- on 19.01.2006, the plaintiffs had not pleaded that the first defendant had issued a receipt towards the same. Similarly, for the other payments made till April 2006, amounting to Rs.10,50,000/-, the plaintiffs had not pleaded as to whether any receipt or other documents had been secured from the first defendant towards any acknowledgment of the same. Therefore, even as per the case of the plaintiffs as pleaded, no receipt or document had been secured from the first defendant for the payments made by them to the first defendant on various dates amounting to Rs.10,50,000/- till April 2006. Thereafter, the plaintiffs would come forward with the case as if they had taken a written agreement from the first defendant on 02.05.2006 and thereby the first defendant had acknowledged the receipt of the entire sale consideration paid by them prior to the same. On a perusal of the sale agreement marked as Ex.A1, as rightly put forth by the first defendant's counsel, nowhere therein it has been mentioned that the first defendant had issued receipts for the various amounts paid by the plaintiffs till April 2006 as claimed in the plaint. In specific, though the plaintiffs, during the course of trial, had chosen to mark the document Ex.A4, claiming to be the receipt given as an acknowledgment for the various payments made by the plaintiffs to the first defendant, on a perusal of Ex.A4, it is found that in the front page, the same pertains to the payment of Rs.50,000/- on 19.01.2006 and on the reverse side, various endorsements had been obtained said to have been acknowledged by the first defendant and her husband towards the various payments made by the plaintiffs as put forth in the plaint. As contended by the first defendant's counsel, on a perusal of the same, it is found that the receipts found on the reverse side of Ex.A4 are found to have been written at the same time and they are also not in a chronological order. The endorsements said to have been made by the first defendant and her husband do not have the dates of signing of the receipts. Furthermore, as put forth by the first defendant's counsel,

Ex.A4 had not been filed by the plaintiffs along with the plaint and Ex.A4 has not been averred in the plaint. Ex.A4 has not been averred or mentioned in the sale agreement Ex.A1. Furthermore, when the plaintiffs had endeavoured to obtain the stamp receipt for Rs.50,000/- said to have been paid by them on 19.01.2006 from the first defendant, however, as regards the other receipts said to have been obtained from the first defendant and her husband, in all, amounting to Rs.10,00,000/-, no stamp receipt had been obtained by the plaintiffs and the plaintiffs have not given any valid reason for not obtaining the stamped receipts for the said payments said to have been acknowledged on the reverse side of Ex.A4. Furthermore, as rightly put forth by the first defendant's counsel, Ex.A4 had not been referred to by P.W.1, the first plaintiff, in his proof affidavit and also he had also not given the details as to the date of the payments and the amounts paid to the first defendant. Furthermore, it has been admitted by P.W.1 that Ex.A4 has not been filed by him along with the plaint and it is further noted that even in the pre-suit notice marked as Ex.A2, neither Ex.A1 sale agreement nor Ex.A4 receipt had been referred to. To cap it all, P.W.1 during the course of evidence, at the time of cross examination, has admitted that though he had claimed that he had taken receipt for the payment of various amounts to the first defendant, however, would state that at the time of entering into Ex.A1 sale agreement, the same had been destroyed. Therefore, even as per the case of P.W.1, the receipts said to have been secured from the first defendant for the various payments made by the plaintiffs towards the sale price had already been destroyed at the time of entering into the sale agreement. If that be so, it does not stand to reason as to how the plaintiffs had chosen to mark the receipts projected as Ex.A4 said to have been issued by the first defendant towards the various amounts alleged to have been paid by the plaintiffs. It is to be noted that the abovesaid receipt Ex.A4 had come to be marked through P.W.3 Balasubramaniam. According to P.W.3, who claims to be the auditor of the plaintiffs, the abovesaid receipt was in his custody. Furthermore, P.W.3 would also claim that Ex.A1 sale agreement was prepared in his office and however, he had not attested the same and further admitted that Ex.A4 had not been referred to in Ex.A1 sale agreement and further also admitted that, on the receipts found on the reverse side of Ex.A4, no attestor had signed and also would admit that there is no endorsement found in Ex.A1 that the parties have agreed to take sale agreement subsequently and would further claim that after Ex.A1 sale agreement, Ex.A4 receipt was in his custody and further would also state that after Ex.A1 sale agreement, the same had been in the custody of the plaintiffs. As above noted, P.W.1 had claimed that the receipts said to have been taken from the first defendant towards the various payments made by them had been

destroyed at the time of entering into the sale agreement. Per contra, quite inconsistent to the abovesaid case, P.W.3 would claim that Ex.A4 projected in the matter had been retained by him after the sale agreement and subsequently, he controverting the abovesaid statement, would state that the said receipt had been with the plaintiffs after the execution of the sale agreement. If really Ex.A4 receipt had been in the custody of the plaintiffs and had been lawfully secured from the first defendant for the various payments said to have been made by the plaintiffs, necessary recitals to that effect could have been incorporated in Ex.A1 sale agreement and in the pre-suit notice as well as in the plaint. However, the plaintiffs had not whispered about the receipt Ex.A4 in the abovesaid documents and also not averred about the same in the plaint and also not filed the same along with the plaint and also not marked the same through P.W.1. Without any basis, P.W.3 had projected Ex.A4 receipt claiming the same to be in his custody whereas P.W.1 would claim that the receipts obtained from the first defendant had been destroyed at the time of the execution of the sale agreement Ex.A1. Therefore, as rightly put forth by the first defendant's counsel, when with reference to the execution of Ex.A4 receipt, various infirmities and contradictions are found to be in existence and when as above noted, the first defendant had totally disputed the case of the plaintiffs in toto and disputed the oral sale agreement projected by the plaintiffs in toto and also disputed the various payments said to have been paid by the plaintiffs to her and in such view of the matter, the abovesaid infirmities and contradictions surrounding Ex.A1 and Ex.A4 would only undermine the plaintiffs case and therefore, it is found that the plaintiffs' case revolving around the abovesaid documents being found to be unacceptable and unreliable and on that basis, no safe reliance could be attached to the authenticity of the sale agreement projected by the plaintiffs, both oral and written, and also to the alleged payments said to have been made by them to the first defendant as projected in the plaint.

12. According to the plaintiffs, the various payments projected in the plaint had been made by them to the first defendant directly. However, from the materials placed on record, it is found that P.W.2, Rajasekar has claimed that it is he who had made some payments, particularly, it is he who had issued a sum of Rs.5,00,000/- to the first defendant. According to P.W.2, Rajasekar, as directed by the plaintiffs, he had paid the abovesaid sums and the other sums to the first defendant. However, as rightly put forth by the first defendant's counsel, there is no material to hold that any sum was due to P.W.2 by the plaintiffs and accordingly on that understanding P.W.2 had made the payment to the first defendant. As abovenoted,

according to the first defendant, to discharge the mortgage liability of the second defendant/bank, she had approached P.W.2 Rajasekar for loan and at that point of time Rajasekar had obtained her signatures in the blank stamp papers and plain papers and making use of the same, has instigated the plaintiffs to lay the suit. When the alleged payments said to have been made by the plaintiffs on various dates to the first defendant is found to be unreliable and unacceptable, as abovenoted, and when Ex.A4 projected by the plaintiffs with reference to the same is found to be totally unacceptable and found to be a created document and also not found to be legally sustainable and when from the materials placed on record, it is found that certain payments had been made only by P.W.2 and when the abovesaid payments had been failed to be established to be made by P.W.2 as per the direction of the plaintiffs and particularly when there is no monetary transaction established between the plaintiffs and P.W.2 in particular, in such view of the matter, the facts and circumstances surrounding in the matter would only go to show that inasmuch as the first defendant had approached P.W.2 for discharging the mortgage liability, accordingly it is found that P.W.2 had paid the abovesaid sum to the first defendant and therefore, the probability that the first defendant's signature had been secured by P.W.2 at that point of time cannot be ruled out. The facts viewed in the abovesaid angle coupled with the inconsistencies and contradictions surrounding the receipt marked as Ex.A4 as well as the failure of the plaintiffs to verify the capability of the first defendant to convey an encumbrance free title qua the suit property, particularly, the plaintiffs having not endeavoured to make any verification with the second defendant/bank, to say that the plaintiffs had ventured into the sale agreement merely on the assurance given by the first defendant qua the One Time Settlement letter given by the first defendant cannot at all be accepted in any manner.

13. Though P.W.1 would claim that he is not aware of the mortgage decree obtained by the second defendant against the first defendant dated 09.03.1999 in O.S.No.343 of 1994 at the time of cross examination made by the first defendant, however, subsequently when P.W.1 had been cross examined by the second defendant, it has been clearly admitted by P.W.1 that at the time of entering into the sale agreement, he is aware of the mortgage debt secured by the first defendant from the second defendant and would state that he had not endeavoured to verify with the second defendant/bank as to the extent of the mortgage liability of the first defendant and also stated that he had not approached the second defendant to discharge the mortgage debt on his own and therefore, it is found that the plaintiffs, without making any verification, had claimed to have entered into the sale agreement with the first defendant knowing fully

well that at that time the first defendant had already mortgaged the suit property with the second defendant/bank and that the second defendant had obtained a decree against the first defendant and also initiated the proceedings under SARFAESI Act, accordingly it is found that the plaintiffs are unable to establish a clear case as to the various payments said to have been made by them amounting to Rs.10,50,000/- upto April 2006 based on the oral agreement dated 19.01.2006.

14. The further case of the plaintiffs that after making the substantial payment of Rs.10,50,000/-, they had chosen to enter into the written sale agreement on 02.05.2006 as such cannot be readily believed and accepted. As abovenoted, if really a valid agreement had been entered into between the parties, as put forth by the plaintiffs on 19.01.2006, at that point of time itself, the plaintiffs would have endeavoured to obtain a written sale agreement from the first defendant. No doubt, the parties are entitled to enter into an oral sale agreement, however, when the abovesaid oral agreement put forth by the plaintiff has not been established and the plaintiffs had miserably failed to establish the various payments said to have been made by them pertaining to the alleged oral agreement amounting to Rs.10,50,000/- upto April 2006 and when the receipt marked as Ex.A4 with reference to the same, on the side of the plaintiffs is found to be totally unreliable and a created document, in such view of the matter, the claim of the plaintiffs that a valid sale agreement had been entered into between them and the first defendant for the sale of suit property orally on 19.01.2006 and subsequently by way of written agreement on 02.05.2006, as such, cannot be believed and accepted in any manner.

15. As rightly put forth by the first defendant's counsel, if really the various payments had been made by the plaintiffs as claimed by them, the plaintiffs would have endeavoured to place the bank records to show that the payments had been effected by them on various dates. However, despite the claim of the plaintiffs that various payments had been made by way of cheques, however, when with reference to the same, the best evidence has not been projected by the plaintiffs, naturally, as contended, adverse inference has to be taken against the plaintiffs particularly when the authenticity of Ex.A4 receipt has not been established by the plaintiffs in any manner.

16. The trial court seems to have accepted the plaintiffs' case merely on the admission of the first defendant that her signatures are available in the sale agreement and in the receipts marked as Ex.A4. No doubt, the first defendant had admitted the signatures in Ex.A1 and the receipts projected by the plaintiffs. As above noted, when the plaintiffs have

miserably failed to establish that the various payments claimed to have been made by them to the first defendant directly had been really effected by them and on the other hand, when the substantial payments with reference to the same had been made only by P.W.2, Rajasekar and when according to the first defendant she had only approached P.W.2 for loan to discharge the mortgage loan of the second defendant/bank and at that point of time, P.W.2 had obtained her signatures in various blank stamp papers and plain papers and considering the infirmities and contradictions surrounding Ex.A4 receipt projected by the plaintiffs as well as the absence of any reference about Ex.A4 in Ex.A1 sale agreement, all coupled together, would only probabalise the defence version of the first defendant that inasmuch as her signatures had been obtained in various blank papers, the same had been utilized subsequently by P.W.2 and accordingly the suit had come to be laid at his instance on behalf of the plaintiffs. Accordingly, it is found that the plaintiffs are not in a position to establish that it is they who had made the various payments said to have been received by the first defendant amounting to Rs.12,00,000/- and therefore, merely because the first defendant and her husband admitted their signatures in Ex.A1 sale agreement and the receipt Ex.A4 and when the first defendant and her husband disputed the contents of the same in toto, in such view of the matter, the trial court is found to have totally erred in accepting the plaintiffs' case, particularly, when the plaintiffs have miserably failed to establish the truth and validity of the oral sale agreement dated 19.01.2006 as well as the written sale agreement dated 02.05.2006.

17. Furthermore, quite inconsistent to the case projected by the plaintiffs, P.W.1 would further claim that the written sale agreement was made on 19.01.2006 and the receipt of Rs.50,000/- had been acknowledged in the said written agreement. However, the alleged written agreement said to have been entered on 19.01.2006 has not seen the light of the day and P.W.1 has admitted that he has not produced the said agreement. Therefore, when according to P.W.1, an agreement had been already taken in writing on 19.01.2006, it does not stand to reason as to how come a subsequent written agreement had been taken on 02.05.2006. When Ex.A4 receipt said to be the acknowledgement for the various payments given by the plaintiffs to the first defendant had not been established and when Ex.A4 had not been referred to in Ex.A1 sale agreement and in the plaint as well as in the proof of affidavit of P.W.1, all put together and furthermore, when Ex.A4 had been claimed to have been destroyed by P.W.1 at the time of Ex.A1 sale agreement and quite inconsistent to the abovesaid version, P.W.3 would only aver that Ex.A4 was in his custody and also would state that the same had been in the custody of the plaintiffs subsequent to Ex.A1,

when there is no proper explanation with reference to the abovesaid inconsistencies and contradictions, it is found that the plaintiffs case is shrouded with mystery and accordingly they could not place any convincing proof qua the veracity of the same and in such view of the matter, as rightly put forth by the first defendant's counsel, when the relief of specific performance is found to be the discretionary relief, the court is required to take into consideration all the circumstances under which the sale agreement in question had been entered into between the parties concerned and when as above discussed, the plaintiffs had miserably failed to establish the truth and validity of the oral sale agreement as well as the written sale agreement and also the various payments said to have been effected by them to the first defendant and also failed to establish the truth and validity of Ex.A4 receipt and furthermore, when the plaintiffs despite having knowledge about the encumbrance created by the first defendant with the second defendant/bank and also the mortgage decree having been obtained by the second defendant against the first defendant and also the SARFAESI proceedings pending against the first defendant at the instance of the second defendant, to say that despite all the abovesaid factors, the plaintiffs had ventured to enter into the sale agreement with the first defendant for the sale of the suit property, cannot at all be believed and accepted in any manner.

18. The plaintiffs would put forth the case that based on the letter of offer dated 14.11.2005 issued by the second defendant and the assurance given by the first defendant that she would comply with the same, they had proceeded to enter into the sale agreement. The abovesaid letter of offer dated 14.11.2005 has been marked as Ex.B4. On a perusal of the same, it is found that the same had been issued on terms and not an unconditional offer had been offered by the second defendant to the first defendant. It is found that by way of the said letter, the second defendant has stressed that since the case is pending before the court / DRT/BIFR, any settlement will be subject to the consent decree / necessary orders from the court / DRT/BIFR and the letter of offer is issued without prejudice to the rights and contentions of the bank in the abovesaid proceedings. Further, it has also been mentioned in the said letter since the first defendant had already been issued notice under the SARFAESI Act, the letter of offer is issued without any prejudice to the rights of the second defendant to take / continue action under the Act unless a compromise is settled under the present RBI OTS scheme. Therefore, when the letter of offer dated 14.11.2005 issued by the second defendant is only on various terms, as above pointed out, and not unconditionally given and when by way of the said letter also the plaintiffs are made aware of the proceedings initiated by the second defendant against the first defendant under the SARFAESI Act and the

abovesaid letter had been issued without prejudice to the rights of the second defendant to take action under the said Act and the proceedings pending before the DRT, in such view of the matter, the claim of the plaintiffs that they had been assured by the first defendant that the abovesaid letter of offer had been issued by the second defendant/ bank without any condition and accordingly proceeded and endeavoured to enter into the sale agreement with the first defendant in respect of the suit property, as such, cannot be believed and accepted. If really, the plaintiffs had been sincere and earnest and bonafide in purchasing the suit property, the normal course that would have been adopted by the plaintiffs is to approach the second defendant and enquire with them as to the scope of One Time Settlement offer made by them dated 14.11.2005 and on the other hand, the plaintiffs case that they had blindly believed the assurance of the first defendant on the One Time Settlement offer letter issued by the second defendant/bank without any further verification and made various payments as stated by them, cannot be believed and accepted. When the abovesaid letter of offer is subject to various terms and conditions and when the materials placed on record go to disclose that the abovesaid letter of offer had been subsequently withdrawn and though the plaintiffs would claim that the withdrawal of letter of offer had not been properly communicated to the first defendant, however, when equally it is found that the receipt of Rs.5,00,000/- given by the first defendant to the second defendant's bank had not been acknowledged and received by the second defendant/bank towards the settlement and on the other hand, the same had been received only as FDR for further processing, in such view of the matter, the claim of the plaintiffs that the second defendant is liable to discharge the mortgage debt or the claim of the plaintiffs that the mortgage debt created in favour of the second defendant stands discharged on the payment of Rs.5,00,000/- by the first defendant to the second defendant, as such, cannot be countenanced in any manner and accordingly it is found that when the second defendant had already issued demand notice to the first defendant under the SARFAESI Act and by way of the said notice, the first defendant had been directed not to transfer the suit property by way of the sale, lease or otherwise without obtaining the written consent of the bank and when the plaintiffs are found to be fully aware of the same, particularly when the same had been referred to in the letter of offer dated 14.11.2005, despite all the abovesaid factors, the claim of the plaintiffs that the first defendant had agreed to sell the suit property for Rs.15,50,000/- and the plaintiffs had blindly entered into the sale agreement on the assurance given by the first defendant qua the One Time Settlement offer letter issued by the second defendant/bank cannot at all be believed and accepted and the abovesaid factors had been failed to be considered by the trial

court and therefore, it is found that the sale agreement projected by the plaintiffs is not true and valid.

19. In support of his contentions, the plaintiffs' counsel placed reliance upon the decisions reported in

1. (2011) 1 SCC 429 (J.P. Builders and another vs. A. Ramadas Rao and another)
2. (2004) 6 SCC 649 (P.D'Souza vs. Shondrilo Naidu)
3. (2000) 6 SCC 420 (Motilal Jain vs. Ramdasi Devi (smt) and others)
4. (2010) 5 SCC 401 (S. Kaladevi vs. V.R. Somasundaram and others)
5. (2015) 1 SCC 705 (Zarina Siddiqui vs. A. Ramalingam alias R.Amarnathan)
6. (2008) 11 SCC 45 (Silvey and others vs. Arun Varghese and another)
7. (2011) 6 SCC 529 (Shehla Burney (Dr.) and others vs. Syed Ali Mossa Raza (dead) by lrs. and others)
8. (2008) 4 SCC 256 (Scotts Engineering, Bangalore vs. Rajesh P. Surana and others)

Similarly, in support of her contentions, the first defendant's counsel placed reliance upon the decisions reported in

1. (1995) 5 SCC 115 (N.P. Thirugnanam (dead) by Lrs. vs. Dr. R. Jagan Mohan Rao and others).
2. (2008) 7 SCC 310 (Mohammadia Cooperative Building Society Ltd., vs. Lakshmi Srinivasa Cooperative Building Society Ltd., and others).
3. 2011 (6) CTC 112 (Citadel Fine Pharmaceuticals vs. Ramaniyam Real Estates P. Ltd., and anr.
4. (2012) 2 MLJ 204 (R. Kumar vs. R.Sushilkumar)
5. 2016 SCC Online Del 895:(2016)228 DLT 10 (Shree Aadhiya Build Well Pvt. Ltd., vs. Sh. Kartar Singh & Ors)
6. CDJ 2016 MHC 6522 (T.P. Kandasamy & others vs. Vemba Gounder & others)
7. CDJ 2015 MHC 8018 (V.P. Murugesan vs. P.Shiek Mideen)
8. 2014 (4) CTC 290 (Farooque Dadabhoy vs. Dr. Usha S. Bhat)

9. Manu/TN/7866/2007 (Sreeranga Nachiar vs. Athi Chettiar)

10. Civil Appeal Nos 7268-7269 of 2019 (Ritu Saxena vs. J.S. Grover & anr.)

The counsel for the second defendant placed reliance upon the decision reported in 2014 1 CTC 652 SC (Jagdish Singh vs. Heeralal & other). The principles of law outlined in the abovesaid decisions are taken into account and followed as applicable to the case at hand.

20. In the light of the abovesaid discussions, it has to be held that the reasonings and conclusions of the trial court for upholding the plaintiffs' case are perverse, illogical and irrational as the same had been determined without proper appreciation of the materials placed on record and the principles of law governing the same. In such view of the matter, I hold that the oral sale agreement dated 19.01.2006 is not true, valid and binding on the first defendant. I further hold that the written sale agreement dated 02.05.2006 is not true, valid, and binding on the first defendant. I therefore hold that the plaintiffs are not entitled to seek and obtain the relief of specific performance in respect of the written sale agreement dated 02.05.2006 and I further hold that the plaintiffs are not entitled to seek and obtain the relief of permanent injunction as prayed for. I further hold that the plaintiffs are not entitled to seek the relief of declaration as claimed in the plaint. Accordingly, the point numbers 1 to 5 are answered against the plaintiffs.

Point Nos. 6 & 7.

21. For the reasons aforesaid, the judgment and decree dated 16.04.2009 passed in O.S.No.57 of 2007 on the file of the Additional District and Sessions Court (Fast Track Court No.1), Coimbatore, are set aside. Resultantly, the suit laid by the plaintiffs in O.S.No.57 of 2007 is dismissed with costs. Accordingly, the first appeal in A.S.No.884 of 2009 is allowed with costs and A.S.No.979 of 2009 is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

bga

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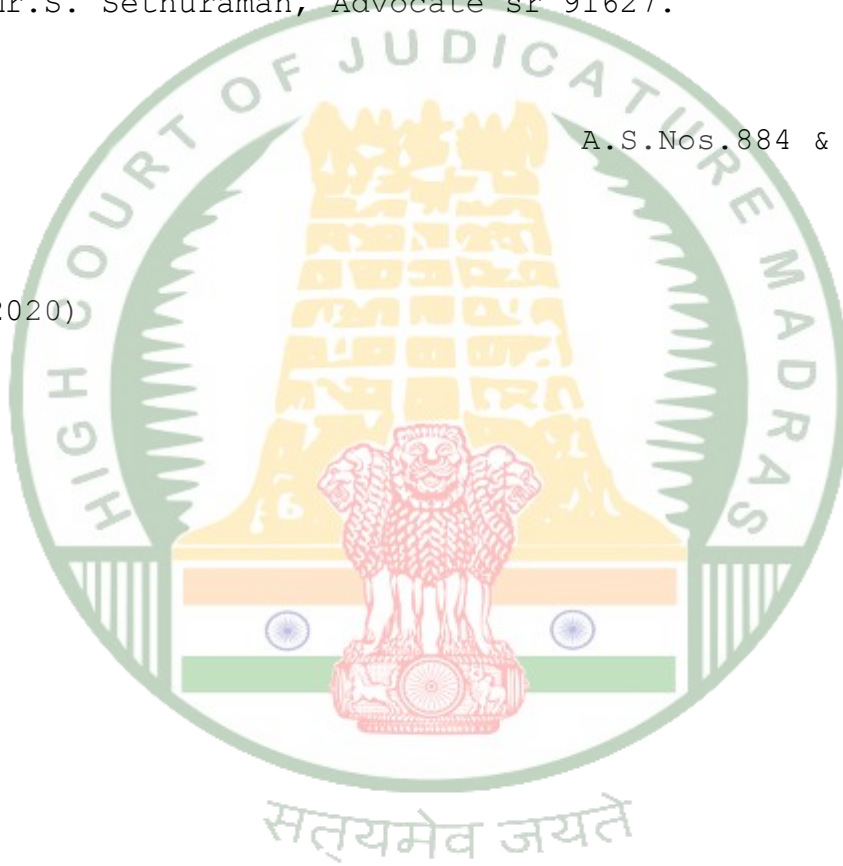
1.Additional District and Sessions Judge
(Fast Track Court No.1),
Coimbatore

2.The Section officer, V.R. Section,
High Court, Madras.

+1 CC to Mr.S. Saravanan, Advocate sr 90903.
+1 Cc to M/s. Sarvabhman Associates sr 90655.
+1 CC to Mr.S. Sethuraman, Advocate sr 91627.

A.S.Nos.884 & 979 of 2009

SSD(CO)
SP(16/12/2020)



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